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2 **NOT FOR PUBLICATION**
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6 **UNITED STATES BANKRUPTCY COURT**
7 **NORTHERN DISTRICT OF CALIFORNIA**
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9 In re:) Case No. 00-0304-MDM
10 RAYMOND CANNON and)
11 SUE CANNON,)
12 Plaintiffs,)
13 vs.)
14 HENRY WILLIAM MUNSTERMAN)
15 and MARILYN H. MUNSTERMAN,) **MEMORANDUM DECISION**
16 Defendants.)
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18 Plaintiffs' application for an order directing the sale of
19 Defendants' dwelling house in satisfaction of Plaintiffs' judgment
20 lien came for hearing on July 31, 2001. Randall Crane appeared
21 for Plaintiffs Raymond and Sue Cannon. Richard Seim appeared for
22 Defendant Marilyn Munsterman (Defendant). Upon due consideration,
23 I determine that the application should be denied because a sale
24 "would not be likely to produce a bid sufficient to satisfy any
25 part of the amount due on the judgment" Cal. C.C.P.
26 704.780(b).
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1 **FACTS**

2 Plaintiffs obtained a nondischargeable judgment against
3 Henry Munsterman in 1989. Mr. Munsterman met Defendant in 1992
4 and they were married a year later. Henry and Marilyn Munsterman
5 purchased the residence in question in 1997. They took title as
6 "Henry W. Munsterman and Marilyn Munsterman, husband and wife, as
7 joint tenants." The property is subject to a deed of trust, which
8 the Munstermans signed as "husband and wife," but which did not
9 specify that they held the property as joint tenants.

10 Plaintiffs renewed the judgment in September 1999 and recorded
11 an abstract of judgment in October 1999. Henry Munsterman conveyed
12 his entire interest in the residence to Marilyn as her sole and
13 separate property via an interspousal transfer grant deed recorded
14 March 20, 2000.

15 At the hearing, Plaintiffs introduced evidence that the fair
16 market value of the residence is \$365,000, and that the balance
17 due under the deed of trust is \$171,130. Plaintiffs concede that
18 Defendants are entitled to a homestead exemption of \$75,000. The
19 only evidence Plaintiffs submitted as to whether the Munstermans
20 owned the residence as joint tenants or community property was the
21 original grant deed and the deed of trust. Although Plaintiffs'
22 counsel stated that Defendant Marilyn Munsterman claimed the
23 residence was community property in the course of her marriage
24 dissolution proceedings, he introduced no admissible evidence to
25 that effect.

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28 **MEMORANDUM DECISION**

1 **DISCUSSION**

2 **A. Is the Residence Held as Community Property or in Joint**
3 **Tenancy?**

4 Defendant argues the form of title specified in the grant deed
5 (joint tenancy) should control. Plaintiffs argue that the property
6 is presumed to be community property pursuant to section 760 of the
7 California Family Code, which provides: "Except as otherwise
8 provided by statute, all property, real or personal, wherever
9 situated, acquired by a married person during the marriage while
10 domiciled in this state is community property." Defendant's
11 argument is more persuasive.

12 Section 760 notwithstanding, the residence is presumed to be
13 held in joint tenancy, because that is the form in which title was
14 taken. Section 760 of the Family Code states that property
15 acquired during marriage is community property "except as otherwise
16 provided by statute." Section 662 of the Evidence Code provides:
17 "The owner of the legal title to property is presumed to be the
18 owner of the full beneficial title. This presumption may be
19 rebutted only by clear and convincing proof." Section 662 has
20 been interpreted to create a presumption that property acquired by
21 husband and wife as joint tenants is held in joint tenancy. See
22 In re Marriage of Haines, 33 Cal. App 4th 277, 291 (1995); cf.
23 In re Marriage of Lucas, 27 Cal. 3d 808, 814-15 (1980)(recognizing
24 common law presumption for form of title). That the California
25 Legislature intended the form of title to control in proceedings
26 between creditors and the married couple is demonstrated in
27 section 2581 of the Family Code, which states that property in
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1 which a husband and wife hold title as joint tenants shall be
2 considered community property only "[f]or the purpose of division
3 of property on dissolution of marriage"

4 Plaintiffs did not rebut the presumption of joint tenancy
5 created by the form of title in the grant deed. The sole
6 admissible evidence introduced by plaintiffs was the deed of trust
7 that the Munstermans signed as "husband and wife." This does not
8 evince an intent to transmute the residence into community
9 property, because the deed of trust was executed solely for the
10 purpose of obtaining a loan, not for the purpose of defining the
11 form of ownership of the property. Plaintiffs' counsel stated that
12 Marilyn Munsterman listed the residence as community property
13 during the couple's marital dissolution proceedings, but introduced
14 no admissible evidence supporting that argument. Introduction of
15 such evidence would not, however, have made any difference.
16 Because a residence owned by a married couple as joint tenants is
17 deemed community property for dissolution purposes, such a claim
18 does not show that the couple did not intend to take title as joint
19 tenants. Abbett Electric Corp. v. Storek, 22 Cal. App. 4th 1460,
20 1467-68 (1994). Plaintiffs' rebuttal evidence also fails because
21 the Munstermans had an obvious reason not to take title as
22 community property -- Henry was liable for a large debt at the time
23 they acquired the property. If the couple had taken title as
24 community property, the entire property would have been liable for
25 that judgment. Cal. Family Code § 910.

26 There is no reason to continue the trial to another date to
27 permit Plaintiffs to introduce additional testimony regarding the
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1 form of ownership. Plaintiffs' counsel was aware that the grant
2 deed stated that the property was held in joint tenancy, and his
3 trial brief reflects that he was aware of the need to rebut the
4 presumption created by that deed. See Reply of Judgement Creditor,
5 filed April 5, 2001, at 4-5. Although the court suggested that
6 some of the issues raised by Defendant at the hearing constituted
7 an undue surprise to Plaintiffs, there was no undue surprise to
8 Plaintiffs regarding any question related to the nature of
9 Defendant's interest in the residence.

10 **B. Calculation of Likely Amount of Proceeds of Sale.**

11 A judgment creditor cannot compel the sale of the judgment
12 debtor's homestead if a sale "would not be likely to produce a bid
13 sufficient to satisfy any part of the amount due on the judgment
14 pursuant to Section 704.800." Cal. C.C.P. § 704.790 (b).
15 Application of sale proceeds is governed by section 704.800(a),
16 which provides that both the mortgage and the homestead exemption
17 must be paid in full before any proceeds may be paid to the
18 judgment creditor. Where, as here, the judgment debtor holds the
19 property as a joint tenant, only the judgment debtor's one-half
20 interest may be sold to satisfy the judgment. Schoenfeld v.
21 Norberg, 11 Cal. App. 3d 755, 760 (1970). In that circumstance,
22 the mortgage and homestead exemption must be paid in full from the
23 sale of the judgment debtor's one-half interest before any proceeds
24 may be used to pay the judgment lien. Id. at 764-66.

25 Plaintiffs cannot compel the sale of Defendant's residence at
26 this time. It is undisputed that the current fair market value of
27 Defendant's residence is no more than \$365,000, that the current
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1 balance on the deed of trust is \$171,000, and that Defendants are
2 entitled to a \$75,000 homestead exemption. For the reasons set
3 forth in the previous section of this memorandum, the judgment
4 debtor has only a one-half interest in the residence as a joint
5 tenant. Thus, a sale of the judgment debtor's interest would not
6 produce any funds to pay Plaintiffs' judgment lien:

7	Expected proceeds from	\$182,500
8	judgment debtor's ½ interest	
9	Less deed of trust	-171,000
10	<u>Less homestead</u>	<u>-75,000</u>
11	Net	-63,500

12 **CONCLUSION**

13 Plaintiffs' motion to compel the sale of Defendant's residence
14 is denied.

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19 Dated: September 6, 2001

20 Thomas E. Carlson
United States Bankruptcy Judge

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